BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012080271
v.	ORDER DENYING NOTICE OF INSUFFICIENCY
LINCOLN UNIFIED SCHOOL DISTRICT.	

On September 24, 2012, Student's father filed a second amended complaint on Student's behalf naming Lincoln Unified School District (District) as respondent. District timely filed a Notice of Insufficiency (NOI) on October 5, 2012. For the reasons discussed below, the issues have been restated in this order and District's NOI is denied.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.[1] The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.[2] These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.[3]

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[1] 20 U.S.C. § 1415(b) & (c).

[2] 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

[3] See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint."[4] The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.[5] Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.[6]

DISCUSSION

Student's complaint alleges that District held an IEP team meeting on September 20, 2011, that on November 17, 2011 another IEP team meeting was held and a new case manager was introduced. On January 31, 2012, Parents learned that another case manager was assigned to Student. Parents were concerned that the multiple changes of case managers resulted in confusion and affected Student's academic support and services. In May 2012, Student's father applied on Student's behalf for extended school year (ESY) because of concerns that Student was short on credits for graduation. Student began ESY on June 13, 2012. On June 15, 2012, District notified Father that it had information that Student no longer resided in the district, and on June 26, 2012 District notified Father that Student was dis-enrolled from school. Over the course of the next two months, Father attempted to register Student in the District after providing proof of residence in the District. Student was enrolled and started Lincoln High School in the District on August 22, 2012. On August 31, 2012, District notified father that it was dis-enrolling Student and denied Student access to attend Lincoln High School because a dispute existed as to Student's district of residence. Student did not attend school through September 20, 2012. District did not conduct a vocational assessment of Student or address Parents' concern that Student needed an individual transition plan (ITP) before his 16th birthday. District has not provided Student with an ITP.

Student's complaint lists the following claims, which have been consolidated for the sake of brevity:

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[4] Sen. Rep. No. 108-185, *supra*, at p. 34.

[5] *Alexandra R. v. Brookline School Dist*. (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

[6] Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Did District deny Student a free appropriate public education (FAPE) in the 2011-2012 and 2012-2013 school years by

a) failing to offer him any special education services notwithstanding the fact that he had an individualized education plan (IEP) in place "for the past three years";
b) placing him on a non-enrolled status without holding an IEP meeting, thereby denying his parents the right to meaningfully participate in the development of his educational programs;
c) failing to hold an IEP team meeting to determine appropriate placement after District unilaterally "dis-enrolled" him;
d) failing to develop an individual transition plan for Student;
e) failing to conduct a vocational assessment before Student's 16th birthday;

Student's complaint includes proposed resolutions, including seeking reinstatement in the District and compensatory education.

Student has had three opportunities to plead his complaint with sufficient facts and, in some respects, he has successfully done so in the second amended complaint. He has not, however, alleged facts going back three years that would support the entirety of the claim articulated in subpart (a) above.

Therefore, when reading all of the facts together, the issues as restated below are sufficiently pleaded:

1) Did District deny Student a FAPE by changing his academic case managers multiple times during the 2011-2012 school year?

2) Did District deny Student a FAPE from June 15, 2012 to the time of filing of Student's second amended complaint by dis-enrolling him from the District and not providing him with any educational services?

3) Did District procedurally and substantively deny Student a FAPE during the statutory period applicable to Student's claims by failing to conduct a vocational assessment and by failing to provide student with an appropriate ITP?

4) Did District deny Student's parents the right to meaningfully participate in the development of Student's educational program during the 2011-2012, and 2012-2013 school year by failing to hold an IEP team meeting when it 1) changed case managers, 2) dis-enrolled Student from the District, and 3) failed to consider Parents' concerns about the need for an ITP for student?

The complaint is sufficient to put the District on notice of the issues forming the basis of the complaint as they are articulated above in issues 1) through 4). The complaint identifies the issues and adequate related facts about the problem, along with proposed resolutions, sufficient to permit District to respond to the complaint and participate in a resolution session, mediation and due process hearing.

ORDER

1. Student's complaint is sufficiently pled under section Title 20 United States Code 1415(c)(2)(D) only as to the clarified issues expressly listed on page three of this Order. If Student intended any other issue to be heard, Student must seek leave to amend the complaint.

2. District's notice of insufficiency is denied.

3. All dates previously set in this matter are confirmed.

Dated: October 8, 2012

/s/
ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings